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BRIEF OF DEFENDANT IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

NO. 188.

WILLIAM H. H. GLEASON, Plaintiff In Error,

Vs.

EDWARD L. WHITE, Defendant In Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1904.

No. 188.

WILLIAM H. GLEASON,

Plaintiff in Error,

vs.

EDWARD L. WHITE,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

The only contention in this case is, as to what lands are embraced in the patent to William H. Gleason under his patent for Lots1 and 2 of Section 19, T. 53, S., R. 42 E., according to the plat of the survey of this Township, made by George McCay, approved July 10, 1845.

There are two plats of this survey, both approved July 10th, 1845. (See printed record, between pages 32 and 33.) On the first, marked "Exhibit A", the north boundary line of Section 19 is much longer than the south boundary thereof, and conforms in this respect to the line as run by M. A. Williams in his survey of 1874, approved February 1st, 1875. (See printed record, pages 26 to 27.)

An examination of the two plats, pages 32 to 33, will show a striking difference in the Bay front as represented on

these two plats. That an Exhibit A would doubtfully mathematically on the other the Boy from incorporated by a straight line, commencing at a point 23.63 chs., east of southwest quarter of the section (28), and running thence, north, 2 degrees, 0 m., 80.00 chs., to a point on the north boundary line, 18.80 chs., east from the north west corner of the same section.

The rule stated by Plaintiff in Error that "where a section is made fractional by the meanderings of water, as an element of land shown by the plat to be bounded by the water, takes to the water," is true only in cases where the boundaries and meander lines have been run by the surveyor and described in the field notes returned to the Surveyor General's office.

It is familiar knowledge to this court that plats of public lands surveys are framed in the Surveyor General's office according to the field notes of such surveys returned to the office by the deputy surveyor. No plats should be held legal which do not substantially conform to the requirements of the statutes of the United States on the subject.

On page 3 of Plaintiff in Error's brief, he says, "under the act of February 15th, 1805, 2nd Stat. at Large, Sec. 2400, U. S. Rev. Stat., Township 38 South, Range 20 East, being made fractional by Biscayne Bay, it was required of the Dep. Surveyor, that in subdividing it he should run the section lines to the water."

He says further, "the official plat of 1845 shows that this was done and that fractional Section 10 was bounded east by the Bay." The Act cited, however, requires nothing concerning the boundaries as run as the proper boundaries." "The distances so run" must be shown by the Field Notes which are the only legal evidence that they were so run and not by the plat.

The requirements of the statute are general and relate to the subdivisions of sections in the interior of townships. The only survey of this Township, made in 1845, was made by George Hunting under contract dated February 15, 1845, under which only the exterior lines of the Township were run

ation, as certified to by W. M. Dunn, acting Commissioner of the General Land Office, on page 10, printed record. Appended to this certificate are the Field Notes of the survey of T. 10 S., R. 1 W., W. M. The affidavit of George Hall (p. 11, R.), is appended to the field notes, in which he swears that to protection of the corner [illegible] conformity to the laws of the United States and instructions of said Surveyor General, he had "diligently surveyed the exterior Township lines therein mentioned" etc., and that the foregoing are the true and original field notes thereof.

On the field notes of this survey an entry is made of an subdivisional lines, but only the western boundary of Section 34, in this township is described, which is a Range line. The plat of this township, of the survey of 1851, was framed and based upon the field notes of the survey, appears on page [illegible] of print of record. The portion of said township of these notes of the north or south boundary or of any meander on the east boundary or the west of the township. The testimony that these lines [illegible] and meanderings as they appear on the plat were run in the [illegible] as contained by any [illegible] or evidence tend to [illegible] of official notice.

There is positive proof in the record that they were run by the survey of 1851. The field notes of the [illegible] the section, made by W. A. Williams, Deputy Surveyor, in 1873, and found on page [illegible] printed record, running [illegible] the north and [illegible] of this section, describe the north boundary as follows:

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

was simply plotted by the draughtsman to show the area of the lot. The rule "That the call for distance must give way to the natural boundary," applies only to cases where the field notes show that the line was actually run to such boundary.

The natural boundary, as shown by the survey and field notes of M. A. Williams, in 1874, is fully 40.11 chains East of the North East corner of Lot 1 on the plat of 1845.

It is known to the Court that official plats must be drawn from the field notes, that field notes are required of all government surveys, and that these, when returned to office, govern the preparation of the plat of the surveys.

Take the case under consideration to illustrate the point here made. How could the draughtsman, who prepared the plat under which the entry was made, know the distance of the north east corner of lot 1 from the section corner, without some field notes showing this distance; or how could he know the distance of the Bay line from the north west corner of the section in the absence of field notes showing these distances. Yet the maker of the plat of 1845 has located the north east corner of Lot 1, on the Bay line of the plat, just 19.81 chains from the north-west corner of the section; when *in fact*, the Bay or water line was 59.92 chains from the north-west corner of the section. This is shown by the field notes of the survey of this line, made by M. A. Williams, in which he describes this line as running through pine land a distance of 44 chains from the starting point where he struck prairie land and so on, through prairie and saw-grass to the Bay, at a point 59.92 chains east of the north-west corner post. The whole of this north boundary line was chained, and described in his field notes. The old quarter section post, which he found in running this line, stood 20.54 chains, in pine woods, east from the north east corner of Lot 1 of the plat of 1845. The plat made from Williams' field notes shows the aggregate area of this section to be 337.76 acres, or 172.92 acres *in excess* of Gleason's entry, for which excess no payment was made. Considering all of the foregoing facts, surely the plat of 1845 cannot be held to be binding upon the Government, except as

to the actual area of Lot 1, as shown on the plat of 1845, which does not touch the land involved in this suit. Finally, this plat of 1845 was proven to be absolutely incorrect by the re-survey of the same township by M. A. Williams in 1874-5, and was virtually withdrawn by the Commissioner of the General Land Office by his order for its survey. This re-survey was ordered at the request of William H. Gleason, through J. W. Gilbert, Surveyor General, at Tallahassee, Florida who states, that "the re-survey of T. 53, S. R. 42 E. is requested by Hon. Wm. H. Gleason, who states that the original survey is entirely, or almost entirely obliterated, and it is imposible for the settlers there to enter their land in consequence." See this letter, page 32 printed record. This is strong corroborative evidence that no interior subdivisional survey was made of this township in 1845, and therefore there was no original survey to be obliterated, which accounts for the absence of any field notes of a subdivisional survey of this township in 1845.

It is unnecessary to discuss the other points made in the brief of Plaintiff in Error, as they all depend upon the decision of the question of boundary, raised in this suit.

Respectfully submitted.

Edward L. White

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in propria persona.